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Ebroadburl Realty Corp. t/a Power Equipment Company and Local 269, International Brotherhood of Electrical Workers, AFL–CIO. Case 4-CA–26249

February 19, 2004

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND MEISBURG

On November 22, 1999, the National Labor Relations Board issued a Decision and Order¹ ordering Power Equipment Company, the Respondent, to make whole employee Jonathan Smith for any loss of earnings and other benefits suffered as a result of his discharge in violation of Section 8(a)(3) and (1) of the National Labor Relations Act. On October 30, 2000, the United States Court of Appeals for the Third Circuit enforced the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatee, on July 31, 2003, the Regional Director issued a compliance specification and notice of hearing identifying the amounts of backpay due upon the discriminatee's reinstatement under the Board's Order, and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. The Respondent subsequently filed an answer to the compliance specification, styled as a "Response."

By a letter dated August 27, 2003, the Region notified the Respondent that its answer did not comply with the requirements of an answer as set forth in the Board's compliance manual (pertinent portions of which were attached to the letter) and that if the Respondent failed to correct the deficiencies by September 17, 2003, the Region would move for summary judgment. The Respondent failed to amend its answer. On October 9, 2003, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On October 15, 2003, the Board issued an order transferring proceeding to the Board and a Notice to Show Cause. The Respondent failed to respond to either the General Counsel's Motion for Summary Judgment or the Board's Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states, in pertinent part:

(b) Contents of answer to specification. The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification. If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted as true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The Respondent's "response" disputed the backpay figure reached in the compliance specification by stating that, "Smith was not entitled, by right, tenure or seniority, to any increase in wage. At all times, the employees of Power Equipment Company received raises or increases in hourly wages based on the ability of the Company to pay them and the job performance of the employee." The General Counsel contends that this answer does not comply with the requirements of Section 102.56(b) and therefore that, pursuant to Section

¹ 330 NLRB 70 (1999).

² *NLRB v. Ebroadburl Realty Corp.*, 242 F.3d 371 (Table) (3d Cir. 2000).

102.56(c), the allegations of the compliance specification should be deemed to be true without the taking of evidence supporting the allegations. We agree.

In its answer to the Regional Director's compliance specification, the Respondent failed to set forth its position as to why Smith by "right, tenure or seniority" is not entitled to the backpay figure reached by the Regional Director and it failed to supply supporting argument and documentation, as required by the Board's Rules. Answers that fail to specifically support a respondent's position do not meet the specificity requirements of Section 102.56(b). See *Paolicelli*, 335 NLRB 881, 883 (2001). We thus find that the Respondent has failed to deny the backpay allegations in the manner prescribed in Section 102.56(b) or explain its failure to do so.

Accordingly, we find that the allegations of the Motion for Summary Judgment are uncontroverted, and we deem the allegations in the compliance specification to be admitted as true. We will order payment by the Respondent of the amount of net backpay stated in the compliance specification to Smith, plus interest accrued on that amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Ebroadburl Realty Corp. t/a Power Equipment Company, Hainesport, New Jersey, its officers, agents, successors, and assigns, make whole Jonathan Smith, by paying him \$1,162.05, plus interest as computed pursuant to *New Horizons for the Retarded*, 283 NLRB 1173 (1987), less tax withholdings pursuant to state or Federal law.

Dated, Washington, D.C. February 19, 2004

Peter C. Schaumber, Member

Dennis P. Walsh, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD